IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5517 OF 2003

Arjun Satappa Kumbhar .. Petitioner
Versus
Shiramabai B. Chambhar .. Respondent

Mr.M.R.Suryawanshi for petitioner
Mr.T.S.Ingale for respondent Nos. 3 and 4.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 2nd February 2006.

P.C.

. Heard Mr.Suryavanshi for petitioner and Mr.Ingale for respondent Nos. 3 and 4. First respondent is dead and his heir is respondent No.2. However, for the purpose of disposal of this petition, presence of this respondent is not necessary.

2. The order under challenge in this

petition is upon an objection by the trial court with regard to payment of stamp duty on a Karar Patra/ Agreement which is the basis of the suit.

3. Regular Civil Suit has been filed in the Court of Civil Judge, Senior Division by petitioner - plaintiff and he claims specific performance of an agreement for sale dated 6th July 1998 and 16th July 1998. It appears that the stamp paper on which agreement dated 6th July 1998 was executed is of the denomination of Rs.50/-. The objection raised by the trial court registry is that as per Schedule I, Article 25 read with Section 32-A of the Bombay Stamp Act, 1958, the stamp duty which is required to be paid on such instrument is on par with that of a conveyance. Objection is that the said document cannot be accepted and read in evidence unless and until petitioner pays deficit stamp duty and penalty liable thereon in accordance with law. The document, therefore, be impounded.

4. Petitioner submitted his reply to the objections raised by the registry of trial court and upon perusal of this reply on 16th August 2001, the order impugned in this petition has been delivered. The trial court has passed the following order:-

> 1. The agreement to sale dated 6/7/98 being conveyanced according to Article 25 stands impounded under section 3 of Stamp Act;
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> 2. The plaintiff to pay deficient stamp of Rs.6,350/- as the said agreement has been described on Stamp Rs.50/- only hence he has to pay deposit of Rs.63,500/- within one month of this order;
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> 3. Likewise the plaintiff to correct

the valuation of the suit property on the consideration of sale deed standing in favour of defendant No.3, 4 in respect of consideration of Rs.3,57,222/- and to pay requisite court fee thereon or relinquish the relief of declaration in respect of said sale deed according to Order 2 Rule 2 of C.P.C. within one month.

4. If within one month plaintiff failed to comply above order then plaint will stand rejected under Order 7 Rule 11 of C.P.C. for want of cause of action and correction of valuation and payment of court fee on consideration of Rs.3,57,222/-."

5. Grievance of Mr.Suryavanshi is that the trial court cannot determine and adjudicate the stamp duty which is to be paid and there is a

complete Code set out vide Chapter IV of the Bombay Stamp Act. As to whether the stamp duty paid or stamp paper, which the instrument bears is in accordance with law, is the duty of authorities under Bombay Stamp Act and the trial court could not have taken upon itself the determination and adjudication and issued such direction.

6. Mr.Ingale, learned Counsel appearing for respondent Nos. 3 and 4 submits that as far as agreement for sale is concerned, the same is rightly impounded. However, as far as deficit stamp duty and penalty thereupon is concerned, in all fairness, he submits that that is the matter which must be dealt with by the authorities under Bombay Stamp Act.

7. In my view, the directions at clauses 1 and 2 of the impugned order would have to be substituted by the following:-

8. Since an objection is raised to the agreement for sale dated 6th July 1998 by the registry of the trial court, it would be just and proper to direct that the said agreement be transmitted by the trial court to the nearest stamp office within a period of three weeks from today. Petitioner shall make appropriate application and apply for adjudication of the stamp duty and penalty thereupon, if any, within a period of two weeks from the date of intimation of the trial court of forwarding the said agreement. It would be open for him to raise such contentions as are permissible in law in support of his submission that the instrument is sufficiently stamped.

9. All observations of trial court insofar as this aspect is concerned shall not influence either the right of petitioner to raise above contentions or the stamp authorities from passing

appropriate orders in accordance with law.

10. As far as direction to correct valuation of the suit property and pay requisite court fee thereon issued by the trial court, in my view, that aspect should not have been dealt with and a common order passed with regard to both set of objections. With regard to valuation of the suit property, it would be open for parties to raise appropriate objections and for petitioner to deal with them as and when raised and the order under challenge to the extent it directs correction of valuation of the suit property, would not bar parties from raising these pleas and for the trial court in framing issues in accordance therewith and deal with them at a later stage. Observations in the impugned order would not bar parties from raising such pleas and trial court shall deal with the same afresh at an appropriate stage. Petition disposed of. Parties to act on an authenticated copy of this order.

(S.C.DHARMADHIKARI, J)